

## **REMARKS**

The Office Action contains a rejection of the two independent claims (claims 28 and 51)<sup>1</sup> and several of the dependent claims under 35 U.S.C. 102(b) as being anticipated by Japanese Publication 59-167842. It is respectfully submitted that Japanese Publication 59-167842 (hereinafter “JP ‘842”) lacks several limitations of the independent claims and that, those differences make all of the claims patentable.

### **I. BACKGROUND**

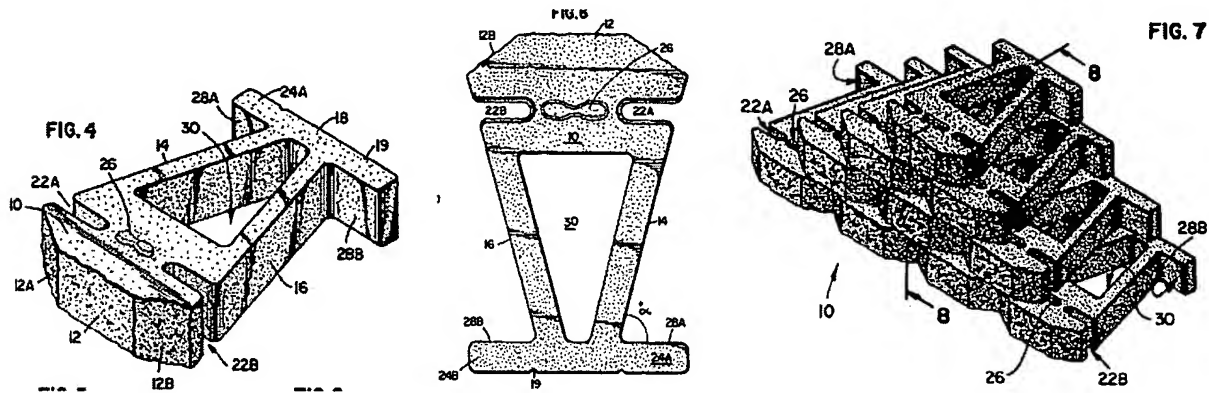
The present patent application is the latest in a series of patent applications filed beginning in 1992 that have resulted in the issuance of several patents. The patents are directed to retaining wall blocks useful in constructing retaining walls formed in ascending courses without using mortar. Anchor Wall Systems, Inc. (“Anchor”), the assignee of the patents and the present application, has licensed the patents to a network of companies that manufacture and sell retaining wall blocks. The majority of blocks made and sold under this family of patents are sold under the trademark “Vertica.” Hence, Anchor will refer herein to the family of patents to which the ‘275 Application belongs as the “Vertica patent family.”

The blocks shown in the Vertica patent family have a structure to locate and stabilize the blocks relative to each other when they are stacked in a retaining wall. This structure is an integral protrusion that protrudes from the top or bottom surface of the block and fits into insets in the sidewalls of blocks in the adjacent course (either above or below). The combination of the protrusions and the insets obviates the need for other types of mechanisms to hold the blocks in place, such as clips, pins, or mortar. Application, page 5, lines 10-23.

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<sup>1</sup> The Office Action refers to “claims 29-33 ...” Office Action, p. 2. This is interpreted as a clerical error since claim 28 is the first pending claim and one of the two independent claims.

Figures 4 and 6 of the present application show one embodiment of the invention illustrating the protrusion 26 and the insets 22A and 22B. Figure 7 shows how these blocks may be laid in courses to form a wall with the block protrusion fitting within an inset of each of the two blocks laid above it.



Figures 4, 6 and 7.

In the preferred system, the protrusion 26 is formed on the top surface of the block. The sidewall insets 22A and 22B are formed in the sides of the block and extend from the top surface to the bottom surface of the block. Application, page 8, lines 5-7. The application describes several different embodiments of this system, and describes how and why the sizes and positions of the insets can be varied relative to the size and position of the protrusion. For example, the application describes using a protrusion that is smaller than the inset to allow for “adequate movement in the interfitting of the blocks in any structure,” and the production of “serpentine walls” (i.e., the “orientation of the blocks to provide inner curving and outer curving walls”). Application, page 10, line 24-page 11, line 18 and page 25, line 18-page 26, line 4. Varying the sizes and positions of the insets relative to the size and position of the protrusion allows for a great many of options, including the construction of vertical or set back walls. Application, page 5, lines 20-23.

## II. ARGUMENT

### A. The Rejection Based on JP '842 is Improper and Should Be Withdrawn

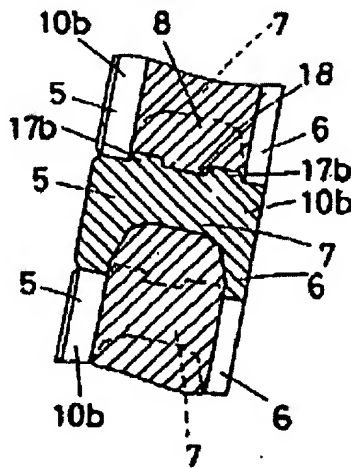
“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” M.P.E.P. 2131, page 2100-73 quoting from *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

#### 1. JP '842 Does Not Disclose Each and Every Element of Independent Claim 28

Several of the key elements of claim 28 are not disclosed in JP '842. Thus--

##### a. JP '842 Does Not Disclose a “Mortarless” Retaining Wall Block as Recited in Claim 28

JP '842 is not at all concerned with a “mortarless” retaining wall block as recited in claim 28. Instead, it discloses “Kenchi blocks” that are stacked and then filled with concrete in order to form a wall. Figure 10 of JP '842 is reproduced below:



The purpose of the projections 17b (on top of beams 7) that engage plates 5 and 6 of a block in an adjacent course is to hold the blocks in place during stacking and filling with concrete 8. JP '842 Translation obtained by AWS, pp. 2-3; JP '842 Translation provided to AWS by Rockwood Retaining Walls, Inc., pp. 3-4; both provided with IDS filed March 22, 2005. As shown, the

beams 7 and projections 17b of adjacent blocks are spaced from each other so that concrete 8 surrounds all of the beams 7 and projections 17b in a constructed wall. Thus, the blocks alone are not intended to function as a retaining wall, but rather function as a form to hold the concrete 8 that is pumped into them.

Such a mortared retaining wall system is totally different from the mortarless retaining wall systems that are claimed in the present application. The mortared retaining wall system of JP '842 is complicated, and would almost certainly require skilled labor to build. A cement truck is necessary to provide the large amount of concrete that is necessary to fill the Kenchi blocks if a retaining wall of any significant height is to be constructed. Moreover, because the mortared wall is rigid, it would require the use of frost footings in climates where freezing is a possibility. Such frost footings require excavation and skilled labor.

**b. JP '542 Does Not Disclose a Block in Which the Edge Opposite an Edge Having Protrusions Lies on a Generally Straight Line That Extends from the Front Edge to the Rear Edge as Recited in Claim 28**

Claim 28 recites that “in side elevation view ... the top or bottom edge opposite the edge from which the locator protrusion projects extends from the second front edge to the second rear edge and is generally horizontal and generally lies on a first straight line.” Claim 28, lines 23-29. Thus, in a structure like that disclosed in the preferred embodiments of the present invention and those of JP '842 where the protrusion is on the top of the block, claim 28 requires that in side elevation view the bottom edge of the block be “generally horizontal” and “generally lies on a first straight line” which “extends from the ... front edge to the ... rear edge.” That is true of the embodiments of the present invention (see e.g. Figure 2 where the bottom edge 8 of the block is on a straight line which is horizontal when the block is used to build a retaining wall as in Figure 7). It is not true of the blocks of JP '842 where the bottom of the block goes from the bottom of

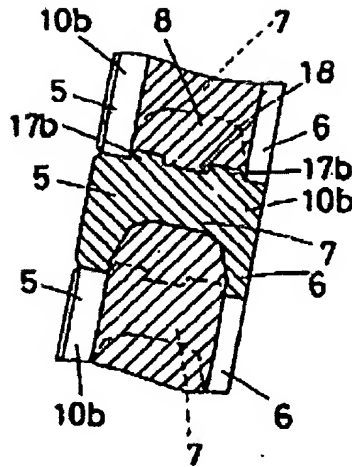
the front plate 5 to the bottom of the beam 7 to the bottom of the back plate 6, which clearly is not on a generally straight line.

**c. JP ‘842 Does Not Disclose “Insets” Extending All of the Way to a Generally Full-Length Straight Line Edge Opposite an Edge Having Protrusions as Required by Claim 28**

The requirement in claim 28 that the bottom edge of the block be on a generally straight line in side elevation view also requires that, where the protrusion is on the top of the block so that the bottom edge is generally straight, the “insets” in the sides of the block extend all the way to the generally straight bottom edge of the block since the claim recites that they extend “from the block body top to the block body bottom.” Claim 28, lines 3-5. Although the examiner has not identified what exactly he considers the insets to be in JP ‘842, the only areas that are remotely like “insets” in the sides of the block are the areas adjacent the sides of the beam 7 (see Figures 7 and 9). However, clearly in the side elevation view (Figure 10) those areas do not extend to a generally straight line bottom edge of the block which extends from the front of the block to the rear of the block, and thus they do not meet that limitation of claim 28.

**d. JP ‘842 Does Not Disclose “Protrusions Adapted to Fit Within Insets” as Recited in Claim 28**

Moreover, in JP ‘842 there is no “portion of each locator protrusion” that “is adapted to fit within an inset on a block in an adjacent course of blocks when a plurality of blocks are stacked in ascending courses to form a wall” as recited in claim 28. Claim 28, lines 7-9. This is most clearly seen in Figure 10 of JP ‘842:



This figure illustrates the full view of the lower portion of the top block, a full view of the upper portion of the bottom block, and a section through the longitudinal center of the center block.

There are section lines in the area between the front plate 5 and the back plate 6 of the top and bottom blocks because the concrete 8 fills that area and is sectioned in Figure 10. But the bottom of the beam 7 of the top block is clearly visible and the protrusions 17b on the center block below it are also clearly visible. The protrusions 17b are clearly below all parts of the beam 7. Thus, the protrusions do not “fit within” the inset (adjacent beam 7) on a block in an adjacent course of blocks. There is absolutely no interaction between the protrusions 17b and anything that could be an inset.

Because JP ‘842 does not disclose several of the elements of claim 28, it is respectfully submitted that claim 1 is patentable in view of the cited art.

## **2. JP ‘842 Does Not Disclose Each and Every Element of Independent Claim 51**

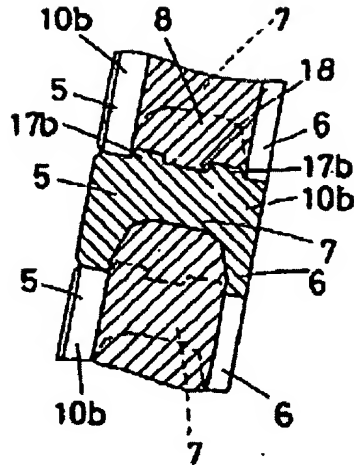
Two of the elements of claim 28 also recited in claim 51 and one additional element recited in claim 51 are not disclosed in JP ‘842. Thus--

**a. JP ‘842 Does Not Disclose Two Elements Common to Claims 28 and 51**

Like claim 28, independent claim 51 recites that the block is a “mortarless” retaining wall block and that “at least a portion of each locator protrusion is adapted to fit within an inset on a block in an adjacent course of blocks when a plurality of blocks are stacked in ascending courses to form a wall.” Claim 51, lines 1 and 7-9. Thus, it is respectfully submitted that claim 51 is patentable over the cited reference for the same reasons as discussed above with respect to claim 28.

**b. JP ‘842 Does Not Disclose Protrusions and Insets Configured to Permit Rearward Shifting of the Upper Block in a Course of Blocks as Recited in Claim 51**

Claim 51 also recites that “the maximum front-to-back dimension, in side elevation view, between the forwardmost edge and the rearwardmost edge of each locator protrusion is smaller than the maximum front-to-back dimension, in top plan view, between the forward and rearward edge portions of the inset portions so that when a plurality of the blocks are stacked in ascending courses ... there is not interference between the locator protrusions and insets that will resist at least some rearward shifting of the upper course block.” Claim 51, lines 31-40. In JP ‘842 when the blocks are stacked up to form a wall the protrusions 17b on a block in a lower course extend from the front plate 5 to the back plate 6 of the block in the course above as can be clearly seen in Figure 10:



The upper block is locked onto the lower block in the front to back direction by the interaction between the protrusions 17b and the plates 5 and 6. The blocks cannot move in the front to back direction. Thus, they do not meet the limitation of claim 51 that “there is not interference between the locator protrusions and insets that will resist at least some rearward shifting of the upper course block.”

Therefore, it is respectfully submitted that claim 51 is patentable over the cited art for the same reasons as claim 28 is, and for the additional reason that the prior art does not render obvious the specific structure of the interaction between the insets and protrusions set forth in claim 51.

### 3. The Dependent Claims

Dependent claims 29-34, 36-41, 44-50, 52-56, 58-63 and 66-72 all depend from either claim 28 or claim 51, and are allowable for the same reasons discussed above with respect to the independent claims. The notice that claims 35, 42, 43, 57, 64 and 65 contain allowable subject matter is noted with appreciation.



### III. CONCLUSION

It is respectfully submitted that the rejection based on JP '842 has been shown to be in error because there are several differences between JP '842 and the invention claimed in independent claims 28 and 51. As such, the claims are in condition for allowance. Anchor respectfully requests that a favorable action, in the form of Notice of Allowance of all of the claims, be issued.

Respectfully submitted,

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